

UNITED STATES DISTRICT COURT

EASTERN

District of

NORTH CAROLINA

UNITED STATES OF AMERICA

V.

NITTA KISEN KAISHA LTD.

JUDGMENT IN A CRIMINAL CASE

(For Organizational Defendants)

CASE NUMBER: 7:18-CR-30-1H

Don Evans, Seth Buskirk, Thomas Russo, William Pallas

Defendant Organization's Attorney

THE DEFENDANT ORGANIZATION:

☒ pleaded guilty to count(s) 1 and 2 (Criminal Information)

☐ pleaded nolo contendere to count(s) _____
which was accepted by the court.

☐ was found guilty on count(s) _____
after a plea of not guilty.

The organizational defendant is adjudicated guilty of these offenses:

<u>Title & Section</u>	<u>Nature of Offense</u>	<u>Offense Ended</u>	<u>Count</u>
33 U.S.C. §§ 1907 and 1908(a); 33 CFR § 151.25; 18 U.S.C. § 2	Knowing Failure to Maintain Accurate Oil Record Book - Act to Prevent Pollution from Ships and Aiding & Abetting **Continued on page 2.....	May 17, 2017	1

The defendant organization is sentenced as provided in pages 2 through 6 of this judgment.

☐ The defendant organization has been found not guilty on count(s) _____

☐ Count(s) _____ ☐ is ☐ are dismissed on the motion of the United States.

It is ordered that the defendant organization must notify the United States attorney for this district within 30 days of any change of name, principal business address, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant organization must notify the court and United States attorney of material changes in economic circumstances.

Defendant Organization's
Federal Employer I.D. No.: N/A

Defendant Organization's Principal Business Address:

Nitta Kisen Kaisha Ltd.
4, Kaigandori, Chuo-ku
Shimmeikai Bldg. Nai
Kobe-shi, Hyogo-ken, 650-0024, Japan

May 10, 2018

Date of Imposition of Judgment

Signature of Judge

Honorable Malcolm J. Howard Senior U.S. Judge

Name of Judge

Title of Judge

May 10, 2018

Date

Defendant Organization's Mailing Address:

Nitta Kisen Kaisha Ltd.
4, Kaigandori, Chuo-ku
Shimmeikai Bldg. Nai
Kobe-shi, Hyogo-ken, 650-0024, Japan

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ADDITIONAL COUNTS OF CONVICTION

<u>Title & Section</u>	<u>Nature of Offense</u>	<u>Offense Ended</u>	<u>Count</u>
18 U.S.C. § 1519	Destruction, Alteration, or Falsification of Records in Federal Investigations and Bankruptcy	May 17, 2017	2

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PROBATION

The defendant organization is hereby sentenced to probation for a term of :
3 years (3 years as to each of Counts 1 and 2, to run concurrently)

The defendant organization shall not commit another federal, state or local crime.

If this judgment imposes a fine or a restitution obligation, it is a condition of probation that the defendant organization pay in accordance with the Schedule of Payments sheet of this judgment.

The defendant organization must comply with the standard conditions that have been adopted by this court as well as with any additional conditions on the attached page (if indicated below).

THE COURT ORDERS that if at any time during the period of probation, the corporate defendant fails to implement, execute, fund, or continue to fund the ECP, all vessels owned by the corporate defendant shall be denied entry to any port of the United States. This shall apply to all vessels managed by the defendant and/or any successor, assignee, subcontractor, acquirer, affiliate or other entity related to the defendant by reason of shared or common ownership, management or control.

STANDARD CONDITIONS OF SUPERVISION

- 1) within thirty days from the date of this judgment, the defendant organization shall designate an official of the organization to act as the organizations's representative and to be the primary contact with the probation officer;
- 2) the defendant organization shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
- 3) the defendant organization shall notify the probation officer ten days prior to any change in principal business or mailing address;
- 4) the defendant organization shall permit a probation officer to visit the organization at any of its operating business sites;
- 5) the defendant organization shall notify the probation officer within seventy-two hours of any criminal prosecution, major civil litigation, or administrative proceeding against the organization;
- 6) the defendant organization shall not dissolve, change its name, or change the name under which it does business unless this judgment and all criminal monetary penalties imposed by this court are either fully satisfied or are equally enforceable against the defendant's successors or assignees; and
- 7) the defendant organization shall not waste, nor without permission of the probation officer, sell, assign, or transfer its assets.

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SPECIAL CONDITIONS OF SUPERVISION

1. The defendant shall cooperate fully with the United States Probation Office during the period of supervision including truthfully answering any inquiries by the probation office. The defendant shall provide the probation office with the following: full access to any of the defendant's operating locations as necessary; 10 days prior notice of any intended change in principal business or mailing address; and notice of any material change in the defendant's economic circumstances that might affect the defendant's ability to pay fines or meet other financial obligations as set forth in this Judgment.
2. The defendant shall comply with the International Convention for Prevention of Pollution from Ships (MARPOL), and all applicable Federal and state statutes and regulations including, but not limited to the Ports and Waterways Safety Act (PWSA), the Act to Prevent Pollution from Ships (APPS), the Clean Water Act (CWA) and the Oil Pollution Act (OPA) during the period of probation.
3. The defendant shall develop, adopt, implement, and fund the Comprehensive Environmental Compliance Plan (ECP) as agreed to in the Plea Agreement and as attached thereto. The purpose of the ECP is to ensure that all vessels owned and managed by the defendant fully comply with all applicable marine environmental protection requirements established under applicable international, flag state, port state and coastal state law, and United States laws including, but not limited to, the International Convention for Prevention of Pollution from Ships (MARPOL), and all applicable federal and state statutes and regulations including, but not limited to the Ports and Waterways Safety Act (PWSA), the Act to Prevent Pollution from Ships (APPS), the Clean Water Act (CWA) and the Oil Pollution Act (OPA), hereinafter marine environmental protection requirements, and to the additional requirements and policies established by this plan itself. In the case of a conflict between the ECP and any of the aforementioned requirements such that the ECP is less restrictive, then the more restrictive authority shall govern. The ECP shall be implemented within 90 days of this judgment and accessible to all employees of the company.
4. The defendant shall, unless otherwise directed by the probation office, furnish copies of all compliance reports to the probation office and the government. All documents, including any compliance reports, generated as a result of the ECP shall be provided to the United States Coast Guard consistent with the provisions of the ECP.
5. Any proposed modifications to the ECP shall be provided, in writing, to the court, the probation office, the government, and the United States Coast Guard. Enforcement of the ECP will rest with the United States Coast Guard. Any violation of the ECP will be reported by the United States Coast Guard, to the probation office, and to the government within 5 days of discovery of the violation.
6. The defendant shall adopt, implement, and enforce a comprehensive environmental training program for all employees. Further, the defendant shall establish a means by which employees may report (anonymously if so desired) issues of non-compliance with this ECP and any other procedures, policy, or regulation associated with environmental protection. The defendant shall maintain an Open Reporting System by which shore side and vessel employees may anonymously report issues of noncompliance with this ECP and other marine environmental protection requirements via email, or toll-free telephone number, or written forms.

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CRIMINAL MONETARY PENALTIES

The defendant organization must pay the following total criminal monetary penalties under the schedule of payments on Sheet 4.

	<u>Assessment</u>	<u>Fine</u>	<u>Restitution</u>
TOTALS	\$ 800.00	\$ 1,000,000.00	\$

- ☐ The determination of restitution is deferred until _____. An *Amended Judgment in a Criminal Case* (AO 245C) will be entered after such determination.
- ☐ The defendant organization shall make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant organization makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

<u>Name of Payee</u>	<u>Total Loss*</u>	<u>Restitution Ordered</u>	<u>Priority or Percentage</u>
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TOTALS	\$ 0.00	\$ 0.00	
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- ☐ Restitution amount ordered pursuant to plea agreement \$ _____
- ☐ The defendant organization shall pay interest on restitution or a fine of more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 4 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).
- ☐ The court determined that the defendant organization does not have the ability to pay interest, and it is ordered that:
- ☐ the interest requirement is waived for the ☐ fine ☐ restitution.
- ☐ the interest requirement for the ☐ fine ☐ restitution is modified as follows:

* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

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SCHEDULE OF PAYMENTS

Having assessed the organization's ability to pay, payment of the total criminal monetary penalties are due as follows:

- A ☐ Lump sum payment of \$ _____ due immediately, balance due
- ☐ not later than _____, or
- ☐ in accordance with ☐ C or ☐ D below; or
- B ☒ Payment to begin immediately (may be combined with ☐ C or ☒ D below); or
- C ☐ Payment in _____ (e.g., equal, weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after the date of this judgment; or
- D ☒ Special instructions regarding the payment of criminal monetary penalties:

Payment of the special assessment shall be due immediately. Payment of the total fine shall be due and full with 30 days of entry of judgment in this case. If the defendant is unable to pay the fine within the first 30 days, the defendant may pay the fine in installments of \$333,333 for the first year, \$333,333 for the second year, and \$333,334 during the final year of probation.

All criminal monetary penalties are made to the clerk of the court.

The defendant organization shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

☐ Joint and Several

Defendant and Co-Defendant Names and Case Numbers (including defendant number), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.

- ☐ The defendant organization shall pay the cost of prosecution.
- ☐ The defendant organization shall pay the following court cost(s):
- ☐ The defendant organization shall forfeit the defendant organization's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) penalties, and (8) costs, including cost of prosecution and court costs.